

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**IN RE: JOHNSON & JOHNSON  
TALCUM POWDER PRODUCTS  
MARKETING, SALES PRACTICES,  
AND PRODUCTS LIABILITY  
LITIGATION**

**MDL NO. 16-2738 (FLW) (LHG)**

**Judge Freda L. Wolfson**

This document relates to: **All Plaintiffs**

**JOINT APPLICATION FOR APPOINTMENT OF  
THE PLAINTIFFS' STEERING COMMITTEE**

Pursuant to this Court's directive, Christopher M. Placitella, P. Leigh O'Dell and Michelle A. Parfitt submit this joint application for the appointment of the Plaintiffs' Steering Committee.

The individuals and firms outlined in this application meet the criteria for appointment to the Plaintiffs' Steering Committee ("PSC"). They are recognized nationally for their expertise, trial skills and success in the area of complex mass tort actions. These individuals and the firms that they represent have achieved notable success on behalf of individuals who have been injured as a result of defective devices, drugs or consumer products. Significantly, the lawyers and firms proposed here have accepted prior leadership roles in numerous MDL proceedings and have exhibited the leadership qualities necessary for the successful resolution of these important issues of women's public health involving talc and ovarian cancer.

Those who have accepted appointment to and have served on steering committees of previous MDLs understand the commitment of time and resources that are required to develop and attain the successful prosecution of these cases. They are committed to meeting the demands necessary to litigate these claims against Johnson & Johnson, Imerys, and the Personal Care

Products Council (“PCPC”) and stand ready to commit the significant resources necessary to ensure the efficient representation of women who have suffered personal injury and death from ovarian cancer following their use of talcum-powder based products.

Many of the individuals proposed for MDL leadership have already invested significant time and resources toward advancing the litigation over the last several years. The individuals and law firms proposed for leadership represent numerous clients in these mass tort proceedings.

Not only do these individuals have the skill, experience in mass tort matters, resources, and time to fulfill their responsibilities as a member of the PSC, importantly, they have demonstrated their ability to work cooperatively with others. Those individuals proposed for leadership represent a consensus reached following an organizational meeting in Atlanta on November 2, 2016, which was preceded by numerous discussions, calls, and email correspondence. There were significant efforts made to confer with interested counsel and reach an agreed-upon PSC slate that was competent, diverse, inclusive and transparent.

For these reasons, more fully explained below, Christopher M. Placitella, proposed Liaison Counsel, and P. Leigh O’Dell and Michelle A. Parfitt, proposed Co-Lead Counsel, request that the Court enter an order appointing the proposed Plaintiffs’ Steering Committee.

#### **I. Justification for Number of Proposed Members of the PSC**

As noted by the Court during the Organizational Meeting on November 17, 2016, there is much discovery that remains to be done in relation to Johnson & Johnson, Imerys, PCPC, and other third party entities. To date, there has been only limited production of documents and six corporate witness depositions (2 of Johnson & Johnson employees, 2 of Imerys employees, and 2 of PCPC employees). While the claims against each Defendant share common issues of fact, particularly in the area of general causation, Plaintiffs will have the burden of discovery and

proving liability as to each individual Defendant. This will require the formation of individual discovery teams to focus on each of the three Defendants and involved third parties. Other lawyers will be responsible for work that is common to all claims, such as document depository obligations, law and briefing, development of science/experts, and administrative duties. It is noteworthy to mention that Talc products, unlike other pharmaceuticals and medical devices have been on the market for decades, necessitating substantial discovery covering the decades of its use.

One of the important obligations of PSC membership is to represent the interests of all litigants as well as the duty to fund the litigation on behalf of all plaintiffs. This responsibility requires a commitment to expend the necessary funds over an unknown period of time. Because this litigation involves one of Johnson & Johnson's flagship products, Plaintiffs expect that the litigation will be hard fought and protracted. For these reasons, the PSC must be composed of sufficient numbers of individuals whose firms can adequately discover and fund the litigation. As demonstrated by the numerous lawyers who appeared on behalf of Defendants during the November 17<sup>th</sup> hearing, Defendants will spare no expense in the defense of these claims. Johnson & Johnson<sup>1</sup> and Imerys<sup>2</sup> are multinational, multi-billion dollar corporations. Thus far in this litigation, Defendants have demonstrated a desire and willingness to try numerous cases. Should cases proceed in the MDL as bellwether trials, it is expected that the development and trial of those cases will cost hundreds of thousands of dollars (if not up to \$1 million) per trial. The development of expert witnesses and depositions of corporate and third party witnesses will result in the commitment of millions of dollars of hard costs, apart from attorney time.

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<sup>1</sup> As of December 31, 2015, Johnson & Johnson had assets valued at \$133.4 billion.

<sup>2</sup> Imerys reported shareholder equity in the amount of \$2.672 billion as of December 31, 2015.

To limit the number of members on the PSC, the Court essentially limits the manpower and resources available to prosecute Plaintiffs' claims. In light of the nearly unlimited resources available to Defendants, Plaintiffs strongly urge the Court to appoint the proposed members of the PSC.

The proposed leadership slate is composed of 17 individuals. These individuals and their firms represent a large percentage of filed cases. Moreover, a PSC composed of 17 individuals is substantially consistent with many PSC structures in other MDLs. For example, in *In re: Actos (Pioglitazone) Products Liability Litigation*, MDL No. 2299, Judge Rebecca Doherty appointed an 18 member PSC, of which two individuals serve as co-leads and six serve on an executive committee.<sup>3</sup> In *In re: Fresenius Granuflo/Naturalyte Dialysate Products Liability Litigation*, MDL No. 2428, Judge Douglas P. Woodlock appointed an 18 member PSC, of which three individuals serve as liaison counsel and six serve on an executive committee.<sup>4</sup> In *In re: Xarelto (Rivaroxaban) Products Liability Litigation*, MDL No. 2592, Judge Eldon Fallon appointed a leadership structure of 14 members, of which two serve as co-leads and two liaison counsel.<sup>5</sup> In *In re: Gadolinium-Based Contrast Agents Products Liability Litigation*, MDL No. 1909, Judge Dan A. Polster appointed 19 lawyers to leadership with two co-chairs of the PSC, one liaison counsel, and five members of an executive committee.<sup>6</sup> In *In re: Testosterone Replacement Therapy Products Liability Litigation*, MDL No. 2545, Judge Matthew F. Kennelly appointed 32 member PSC with three co-leads, two liaison counsel, and an eight-member executive committee.<sup>7</sup> In *In re: Mirena IUD Products Liability Litigation*, MDL No. 2434, Judge Cathy

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<sup>3</sup> See Ex. 1.

<sup>4</sup> See Ex. 2.

<sup>5</sup> See Ex. 3.

<sup>6</sup> See Ex. 4.

<sup>7</sup> See Ex. 5.

Seibel appointed a 17-member PSC, with three co-leads and one liaison counsel.<sup>8</sup> Judge Joseph Goodwin appointed a leadership structure composed of 61 lawyers in *In re: Ethicon, Inc., Pelvic Repair System Product Liability Litigation*, two of which serve as co-lead counsel, eight who serve as members of an executive committee, and three who serve as liaison counsel.<sup>9</sup> In *In Re: Benicar (Olmesartan) Products Liability Litigation*, MDL No. 2606, Judge Robert Kugler appointed a 21 member PSC, five who serve as members of an executive committee, and one who serves as liaison counsel.<sup>10</sup>

## II. PROPOSED PLAINTIFFS' STEERING COMMITTEE

The lawyers (and their respective law firms) listed below are proposed for leadership because they demonstrate the unique qualifications incumbent on one seeking personal appointment to serve on a PSC. They have committed and dedicated their time and resources to this litigation. Collectively, they represent untold numbers of women who suffer or who have died as a result of ovarian cancer following their use of talcum-powder based products.<sup>11</sup>

### A. Co-Lead Counsel

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### B. Plaintiffs' Liaison Counsel

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<sup>8</sup> See Ex. 6.

<sup>9</sup> See Ex. 7 (Judge Goodwin appointed substantially the same lawyers to serve on the PSC of at least three other transvaginal mesh-related MDLs).

<sup>10</sup> See Ex. 8.

<sup>11</sup> Appended to this motion as Exs. 9 to 25, the Court will find curriculum vitae for each member of the proposed leadership and their firms.

Plaintiffs' Liaison Counsel shall serve as the recipient of all Court orders on behalf of all plaintiffs; coordinate service and filings for all plaintiffs; maintain and distribute to co-counsel and Defendants an updated service list; receive and distribute pleadings, orders, and motions; assist with the establishment and maintenance of a document depository; maintain and make available to all participating plaintiffs' counsel of record a complete file of all documents served by or upon each party; prepare agendas for court conferences; and any such other duties as the Court may order or that may be necessary for the orderly operation of the PSC.

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#### **C. Plaintiffs' Executive Committee**

The Plaintiffs' Executive Committee shall coordinate the responsibilities of the PSC, schedule PSC meetings, keep minutes or transcripts of these meetings, appear at status conferences, and perform other administrative and leadership functions as necessary.

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#### **D. Plaintiffs' Steering Committee**

The proposed members of the PSC are the following individuals, whose roles in the case are more fully explained below in Section III, describing the structure of the various working committees that are anticipated to be needed in order to successfully and efficiently litigate the cases on behalf of all Plaintiffs.

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### **III. Proposed Committee Structure**

The proposed leadership analyzed the work necessary to prosecute the claims of all plaintiffs in this MDL. Based on their analysis and experience in other MDLs, the leadership believes that the following committees are necessary for the efficient and effective prosecution of the PSC's duties. The committees will be chaired or co-chaired by members of the PSC. Each committee will be composed of members of the PSC, associates and colleagues at their firms, and other interested counsel who have communicated their willingness to dedicate their time and resources to provide meaningful work on these cases.

#### **A. Administration Committee**

The administration committee is essential and will focus on establishing and maintaining a document depository, establishing and overseeing the business affairs of the PSC, establishing and overseeing the procedures for common benefit time and expense submission and review, establishing an electronic platform for Plaintiff Fact Sheets and Defense Fact Sheets, among other duties. P. Leigh O'Dell, Sindhu Daniel and Laurence Berman will focus their efforts in part on the duties of the Administration committee.

#### **B. Class Action Committee**

Timothy G. Blood has submitted a separate application for appointment as Rule 23(g) Class Counsel for all consumer class cases. The proposed leadership supports his appointment as Class Counsel and as a member of the PSC. Mr. Blood's membership on the PSC will ensure seamless coordination between the personal injury and class action cases.

#### **C. Discovery Committee**

The Discovery Committee will initiate, coordinate, and conduct all pre-trial discovery on behalf of all plaintiffs in all actions that are consolidated within the MDL. This will necessitate the creation of



teams that focus on discovery relevant to all Defendants. Other individual teams will focus on a specific defendant, resulting in individuals teams assigned to Johnson & Johnson, Imerys, PCPC, and any other named defendants. The Discovery Committee will be responsible for taking the depositions of all liability witnesses. Other Discovery Committee teams will focus on the necessary tasks of document review, sales and marketing, third-party discovery, privilege log review and motion practice, regulatory and post-market surveillance, and insurance. The Discovery Committee will also be responsible for the development and negotiation of proposed court management order for discovery. Numerous PSC members and other interested law firms will be focused on discovery. Michelle Parfitt, P. Leigh O'Dell, Jeff Gibson, Richard Golomb, Richard Meadow, Daniel Lapinski, Vicki Maniatis, Hunter Shkolnik, and Carmen Scott will focus their efforts in part on the Discovery Committee.

#### **D. Law and Briefing Committee**

The Law and Briefing Committee will be responsible for all briefing in matters related to the common benefit of all plaintiffs, including discovery-related motion practice, *Daubert* motions, and motions for summary judgment among others. The committee will be responsible for the preparation of pre-trial orders. The committee will also be responsible for analyzing the legal issues and individual motions that affect the rights of all plaintiffs. Laurence Berman, Warren Burns, Richard Golomb, Daniel Lapinski, their respective associates, and other interested counsel will compose the Law and Briefing Committee.

#### **E. Science Committee**

The Science Committee will be responsible for the development of Plaintiffs' evidence for general and specific causation in the MDL. This will involve the identification and preparation of all MDL experts. Michelle Parfitt, Warren Burns, Jeff Gibson, Richard Golomb, Kristie Hightower, Eric

Weinberg, Mark Whitehead, their respective associates and colleagues, and other interested counsel will compose the Science Committee.

#### **F. Trial Committee**

The Trial Committee will be responsible for the selection, management and presentation of bellwether trials. The Committee will be responsible for assembling and preparing a trial package that can be utilized in future cases, including cases that are remanded to transferor courts for trial. The Trial Committee will also conduct focus groups. P. Leigh O'Dell, Warren Burns, Sindhu Daniel, Richard Golomb, Kristie Hightower, Daniel Lapinski, Vicki Maniatis, their respective associates and colleagues, and other interested counsel will compose the Trial Committee.

#### **IV. CONCLUSION**

The proposed leadership is composed of individuals who individually and on behalf of their law firms have achieved success at the highest levels in mass tort practice. They have the extensive skill and experience necessary to represent the interests of all plaintiffs in the MDL. These individuals and their firms are willing to commit the time and monetary resources necessary to prosecute what will likely be an immensely time consuming, protracted, and expensive litigation. These individuals and their firms represent numerous plaintiffs in this litigation. They are committed to working cooperatively and collaboratively for the common good of all plaintiffs.

For these reasons, we respectfully move the Court to enter an order appointing the proposed Plaintiffs' Steering Committee.

Dated: November 21, 2016

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 21, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive services in this MDL.

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